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RANJIT KAUR S GOPAL SINGH

v.

HOTEL EXCELSIOR (M) SDN BHD

B

FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ (MALAYA)
MOHD GHAZALI YUSOFF FCJ
RAUS SHARIF FCJ
[CIVIL APPEAL NO: 04-1-2009(W) 2009]

C

12 MAY 2010

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Application to quash award of Industrial Court - Reviewing findings of facts - Acting on an unpleaded issue - Finding made in the absence of positive proof - Consideration of irrelevant matters and failure to consider relevant matters - Whether award ought to be quashed*

D

CIVIL PROCEDURE: *Pleadings - Issue not pleaded - Whether court ought to ignore issues not pleaded - Whether parties bound by their pleadings*

E

LABOUR LAW: *Industrial Court - Award - Jurisdictional errors - Acting on an unpleaded issue - Finding made in the absence of positive proof - Consideration of irrelevant matters and failure to consider relevant matters - Whether award ought to be quashed*

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LABOUR LAW: *Employment - Dismissal - Doctrine of condonation, extent and application of*

LABOUR LAW: *Industrial Court - Duty of court - Duty to act according to equity, good conscience and substantial merits of case without regard to technicalities and legal form - Extent of such duty - Whether Industrial Court free to disregard Industrial Court Rules in execution of such duty - Industrial Relations Act 1967, s. 30(5) - Industrial Court Rules 1967*

G

LABOUR LAW: *Industrial Court - Finding of fact - Finding based on unpleaded issue - Whether Industrial Court ought not to consider issues not raised in pleadings - Whether award of Industrial Court based on unpleaded issue ought to be quashed*

H

The appellant was employed as an executive at the Food & Beverage (F&B) Department at Hotel Excelsior (M) Sdn Bhd ("the respondent"). The appellant was required to wear uniform. She protested to being the only executive required to wear a uniform.

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Subsequently, the appellant was suspended pending a domestic inquiry into the following charges levelled against her: (i) refusing to wear the attire namely a collared white shirt and bow-tie; (ii) wilfully and without lawful excuse habitually reporting late for work; (iii) failing to submit medical chits promptly on occasions when she took medical leave; and (iv) failing to inform her immediate superior promptly that she had taken medical leave. She was found guilty of the four charges and was dismissed. The Industrial Court found that the appellant had been dismissed without just cause or excuse. The Industrial Court's award however, was quashed by the High Court by way of an order of *certiorari*. The appellant's appeal to the Court of Appeal was dismissed. The appellant was granted leave to appeal to the Federal Court on the following questions of law: (i) what is the function of the court in an application for judicial review and what is the correct test to be applied in reviewing findings of fact made by the Industrial Court; and (ii) whether the Court of Appeal was correct in law in holding that the Industrial Court as a specialised domain of industrial jurisprudence is subject to a more stringent test in relation to its pleadings and procedure than the civil courts in the face of s. 30(5) of the Industrial Relation Act 1967 ('the Act'). The appellant submitted that even though the issue of victimisation was not pleaded this should not be invoked to defeat the claim of victimisation made by the appellant.

Held (dismissing the appeal with cost)
Per Raus Sharif FCJ delivering the judgment of the court:

(1) Where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court had been arrived at by taking into consideration irrelevant matters, and had failed to consider relevant matters into consideration, such findings are always amenable to judicial review. (para 19)

(2) The Industrial Court whilst recognising that there was no positive proof of victimisation nevertheless went on to conclude that there was victimisation. The High Court as well as the Court of Appeal found that there was no evidence to support the issue of victimisation. Clearly the Industrial Court has committed jurisdictional errors when finding the possibility of victimisation in the absence of positive proof and misdirecting on the standard of proof by reference to possibility instead of a balance of probabilities. (paras 20 & 21)

(3) The appellant refused to wear a white collared shirt and bow-tie. She wilfully and without lawful excuse habitually reported late to work in spite of numerous warnings issued to her. She failed to submit medical certificate of the medical practitioner promptly as was requested of her on the occasion she took medical leave. She also failed to inform her immediate superior whenever she took medical leave. She was a recalcitrant employee. The Industrial Court had failed to take into consideration these relevant matters. (paras 22 & 23)

(4) The Industrial Court also erred when it concluded that the respondent had condoned the appellant's conduct in relation to her coming to work late. The Industrial Court misapplied the doctrine of condonation. The doctrine of condonation would only come into play if the respondent had been fully aware of the applicant's late coming and nonetheless elected to do nothing about it. (para 24)

(5) In light of the multiple errors on the part of the Industrial Court, the High Court was correct in quashing the decision of the Industrial Court. (para 25)

(6) Section 30(5) of the Act cannot be used to override or circumvent the basic rules of pleading. The Industrial Court, like the civil courts must confine itself to the four corners of the pleading. Pleadings in the Industrial Court are as important as in the civil courts. The appellant must plead its case and the Industrial Court must decide on the appellant's pleaded case. The Industrial Court's duty, to act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form under s. 30(5), does not give the Industrial Court the right to ignore the Industrial Court Rules 1967. (paras 28 & 29)

(7) The issue of victimisation was never pleaded. As such the Industrial Court could not act on a ground which was not advanced in a pleaded case. Section 30(5) of the Act could not rescue the appellant's case. (para 31)

Bahasa Malaysia *Translation Of Headnotes*

Perayu bekerja sebagai seorang eksekutif di bahagian Food & Beverage ('F&B') di Hotel Excelsior (M) Sdn Bhd ('responden'). Perayu diperlukan memakai seragam. Perayu membantah kerana beliau seorang sahaja eksekutif yang perlu memakai seragam. Seterusnya, perayu digantung sementara menantikan siasatan domestik mengenai pertuduhan-pertuduhan terhadapnya iaitu (i) menolak memakai pakaian kemeja putih berkolar dan tali leher; (ii) dengan sengaja dan tanpa alasan munasabah lewat ke tempat kerja; (iii) gagal untuk mengemukakan surat-surat perubatan dengan serta-merta apabila mengambil cuti sakit; dan (iv) gagal untuk memberitahu pegawai atasannya dengan serta-merta bahawa beliau mengambil cuti sakit. Perayu didapati bersalah atas keempat-empat pertuduhan dan dibuang kerja. Mahkamah Perusahaan mendapati bahawa perayu telah dibuang kerja tanpa sebab atau alasan yang adil. Award yang diturunkan oleh Mahkamah Perusahaan walaubagaimanapun, telah dibatalkan oleh Mahkamah Tinggi melalui perintah *certiorari*. Rayuan perayu kepada Mahkamah Rayuan telah ditolak. Perayu diberi kebenaran untuk merayu kepada Mahkamah Persekutuan atas persoalan-persoalan undang-undang: (i) apakah fungsi mahkamah di dalam permohonan untuk semakan kehakiman dan apakah ujian betul yang perlu dipakai dalam menyemak dapatan-dapatan fakta yang dibuat oleh Mahkamah Perusahaan; dan (ii) sama ada Mahkamah Rayuan betul dari segi undang-undang apabila memutuskan bahawa Mahkamah Perusahaan sebagai halehwal khusus perusahaan jurisprudens tertakluk kepada ujian yang lebih ketat berhubungan dengan pliding dan prosedur berbanding dengan mahkamah-mahkamah sivil dalam menghadapi s. 30(5) Akta Perhubungan Perusahaan 1967 ('Akta'). Perayu berhujah bahawa walaupun isu pemangsaan tidak diplid ini tidak sepatutnya digunakan untuk menyangkal tuntutan pemangsaan yang dibuat oleh perayu.

Diputuskan (menolak rayuan dengan kos)
Oleh Raus Sharif HMP menyampaikan penghakiman mahkamah:

(1) Apabila fakta tidak menyokong keputusan yang dibuat oleh Mahkamah Perusahaan, atau apabila penemuan-penemuan Mahkamah Perusahaan telah dibuat dengan mengambil dalam pertimbangan perkara-perkara yang tidak relevan, dan telah gagal untuk mengambil dalam pertimbangan perkara-perkara yang relevan, dapatan-dapatan seperti itu tertakluk kepada semakan kehakiman.

(2) Mahkamah Perusahaan walaupun mengenalpasti bahawa tidak terdapat bukti pemangsaan tetapi masih memutuskan bahawa

terdapatnya pemangsaan. Mahkamah Tinggi dan Mahkamah Rayuan mendapati bahawa tidak terdapat keterangan untuk menyokong isu pemangsaan. Mahkamah Perusahaan dengan jelasnya telah melakukan kekhilafan bidangkuasa apabila mendapati bahawa terdapat kemungkinan pemangsaan tanpa apa-apa keterangan positif dan tersalah arah atas standard pembuktian dengan merujuk kepada kemungkinan dan bukan imbangan kebarangkalian.

(3) Perayu menolak pemakaian kemeja putih berkolar dengan tali leher. Perayu dengan sengaja dan tanpa alasan munasabah datang lewat ke tempat kerja walaupun diberi beberapa amaran. Perayu gagal mengemukakan surat sakit dari pegawai perubatan dengan serta merta seperti yang diperlukan apabila perayu mengambil cuti sakit. Beliau juga gagal memberitahu pegawai atasannya apabila beliau mengambil cuti sakit. Perayu adalah seorang pekerja yang bersifat ingkar. Mahkamah Perusahaan telah gagal mengambil dalam pertimbangan perkara-perkara relevan.

(4) Mahkamah Perusahaan juga gagal apabila memutuskan bahawa responden memaafkan kelakuan perayu berhubungan dengan isu lewat kerja. Mahkamah Perusahaan telah salah pakai doktrin pemaafan. Doktrin pemaafan hanya boleh digunapakai jikalau responden sedar bahawa perayu selalu datang lewat tetapi memilih untuk tidak bertindak.

(5) Memandangkan terdapat beberapa kekhilafan dari pihak Mahkamah Perusahaan, Mahkamah Tinggi adalah betul apabila membatalkan keputusan Mahkamah Perusahaan.

(6) Seksyen 30(5) Akta tidak boleh digunakan untuk mengatasi atau menyeleweng kaedah asas pliding. Mahkamah Perusahaan, seperti mahkamah sivil mesti mengehadkan kepada pliding yang disediakan. Pliding dalam Mahkamah Perusahaan adalah penting seperti mahkamah sivil. Perayu mesti memplidkan kesnya dan Mahkamah Perusahaan mesti membuat keputusan ke atas kes yang diplidkan oleh perayu. Tugas Mahkamah Perusahaan, untuk bertindak mengikut ekuiti, perasaan hati betul dan merit-merit kes yang cukup tanpa mengendahkan keteknikan-keteknikan dan tatacara di sisi undang-undang di bawah

s. 30(5) Akta Perhubungan Perusahaan 1967, tidak memberi hak kepada Mahkamah Perusahaan untuk tidak menghiraukan Kaedah-kaedah Mahkamah Perusahaan 1967.

(7) Isu pemangsaan tidak diplidkan. Oleh itu Mahkamah Perusahaan tidak boleh bertindak atas alasan yang tidak dibangitkan di dalam kes yang diplidkan. Seksyen 30(5) Akta tidak boleh menyelamatkan kes perayu.

Case(s) referred to:

Colgate Palmolive (M) Sdn Bhd v. Yap Kok Foong & Another Appeal [2001] 3 CLJ 9 CA ***(refd)***

Kumpulan Perangsang Selangor Bhd v. Zaid Mohd Noh [1997] 2 CLJ 11 SC ***(refd)***

National Union of Plantation Workers v. Kumpulan Jerai Sdn Bhd (Rengam) [2000] 1 CLJ 681 CA ***(refd)***

Petroliam National Bhd v. Nik Ramli Nik Hassan [2003] 4 CLJ 625 FC ***(refd)***

Quah Swee Khoon v. Sime Darby Bhd [2001] 1 CLJ 9 CA ***(refd)***

R Rama Chandran, v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Swedish Motor Assemblies Sdn Bhd v. Hj Md Ison Baba [1998] 3 CLJ 288 CA ***(refd)***

Tanjung Jara Beach Hotel Sdn Bhd v. National Union of Hotel & Bar Restaurant Workers Peninsular Malaysia [2004] 4 CLJ 657 FC ***(refd)***

William Jacks & Co (M) Sdn Bhd v. S Balasingam [1997] 3 CLJ 235 CA ***(refd)***

Legislation referred to:

Industrial Court Rules 1967, r. 9(3)

Industrial Relations Act 1967, s. 30(5)

For the appellant - Ambiga Sreenevasan (Shireen Selvaratnam with him); M/s Sree Nevasan

For the respondent - N Sivabalah (Suganthi Singam with him); M/s Shearn Delamore & Co

[Appeal from Court of Appeal; Civil Appeal No: W-04-157-02]

[Editor's note: For the Court of Appeal judgment, please see Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 3 CLJ 301]

Reported by Amutha Suppayah

A

JUDGMENT

Raus Sharif FCJ:

Introduction

B **[1]** This is an appeal filed by the appellant against the decision of the Court of Appeal on 17 September 2008 which upheld the decision of the High Court in quashing the award of the Industrial Court dated 29 September 2001.

C

Background Facts

[2] The relevant facts are as follows. The appellant commenced employment with Hotel Excelsior (M) Sdn Bhd ("the respondent") on 28 September 1993 as a junior receptionist. On 27 August 1984, she was promoted as a senior receptionist and subsequently
D as Front Office Executive with effect from 16 May 1991.

[3] On 1 March 1997, the appellant was transferred to the Food & Beverage (F&B) Department as an executive. The appellant protested to the transfer on the ground that she had no
E experience or knowledge of food and beverage. However, she reported for duty under protest.

[4] By a letter dated 11 March 1997, the respondent issued a job specification to the appellant which include, *inter alia*, the
F following:

> You are to ensure that you and your staff are well groomed before reporting for duty. Personal grooming is of utmost importance and all staff should be in well-dressed attire.

G **[5]** Another letter was issued on 12 March 1997 to the appellant requiring her to wear uniform, and, for that purpose, the respondent gave her two skirts, one jacket and one white blouse. The appellant protested to being the only executive required to wear a uniform.

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[6] On 21 March 1997, the respondent provided the appellant a bow-tie to be worn as part of her uniform. Again the appellant

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raised the fact that she was the only executive being made to wear a uniform and a bow-tie.

[7] On 17 August 1997, the appellant was suspended pending a domestic inquiry into five charges levelled against her. The five charges read as follows:

> Charge No. 1
>
> That you between 6 August 1997 and 10 August 1997 in total defiance of the instructions and a warning issued on 20 March 1997 by your Superior, Mr. Vincent Nonis, you refused to wear the attire namely a collared white shirt and bow-tie.
>
> Charge No. 2
>
> That you on the dates and times shown in annexure (see enclosed annexure) did wilfully and without lawful excuse habitually reported late for work at Hotel Excelsior in spite of numerous warnings issued to you.
>
> Charge No. 3
>
> That you on the following dates and times as set in the annexure (see enclosed annexure) conveniently procured and obtained medical leaves on several occasions which occasions were immediately following day-off, annual leave or public holidays.
>
> Charge No. 4
>
> That you on the following dates and times set out in the annexure (see enclosed annexure) failed to submit your medical chits of the medical practitioners promptly to your immediate superior as was required of you on the said occasions you took medical leave.
>
> Charge No. 5
>
> That you on the following dates and times as set out in the annexure (see enclosed annexure) have failed to inform your immediate Superior promptly that you have taken medical leave so as to enable your immediate Superior to make alternative arrangements for the smooth operation of business at the Dulang Coffee House, Hotel Excelsior.

[8] One of the charges ie, Charge No. 3 was subsequently

dropped. However, she was found guilty of the four remaining charges and consequently she was dismissed with effect from 28 August 1997.

[9] The dismissal was referred to the Industrial Court which found that the appellant had been dismissed without just cause or excuse. The respondent was ordered to pay backwages in the sum of RM42,304.50 and compensation *in lieu* of reinstatement for the sum of RM21,567.

[10] The Industrial Court's award however, was quashed by the High Court by way of an order of *certiorari*. The High Court held that the Industrial Court had erred in law and/or had acted in excess of its jurisdiction by taking into consideration irrelevant matters, and had failed to take relevant matters into consideration, and had failed to consider the pleadings of the parties, and had misdirected itself by asking the wrong question in handing down its award.

[11] Aggrieved by the decision of the High Court, the appellant appealed to the Court of Appeal. The Court of Appeal found the High Court had correctly quashed the Industrial Court award and accordingly dismissed the appellant's appeal with costs. The appellant then applied for leave to appeal to this court. It was granted on 24 March 2009.

Questions Of Law

[12] Two questions of law were formulated for our determination.

1. What is the function of the Court in an application for Judicial Review and what is the correct test to be applied in reviewing findings of fact made by the Industrial Court.

2. Whether the Court of Appeal was correct in law in holding that the Industrial Court as a specialised domain of industrial jurisprudence is subject to a more stringent test in relation to its pleadings and procedure than the Civil Courts in the face of section 30(5) of the Industrial Relation Act 1967.

Question No. 1

What is the function of the Courts in application for Judicial Review and what is the correct test to be applied in reviewing findings of fact made by the Industrial Court.

[13] Learned counsel for the appellant submitted that in view of the systematic attempts to explain the ambit of *R Rama Chandran, v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 (*Rama Chandran*), it is now necessary to revisit and restate the law in this area. She submitted that the decision of the inferior tribunal can be scrutinised for the process and substance. However, she was quick to point out that where the findings of facts by the inferior tribunal are based on credibility of witnesses, those findings of fact should not be reviewed. Applying this preposition of law to the instant case, she submitted that the High Court had erred in reversing the findings of facts made by the Industrial Court, which the former is not entitled to do so.

[14] In response, learned counsel for the respondent contended that the question 1 as framed need not be answered, as the law on this issue is well settled. Learned counsel went on to submit that where the facts do not support the conclusion arrived by the Industrial Court as what had happened in this case, the High Court can in its review of such finding of facts overrides or interferes with the conclusion by the Industrial Court. Learned counsel then highlighted to us the multiple errors of law and fact committed by the Industrial Court which warranted the issuance of the order of *certiorari*.

[15] We find that there is merit on the submission advanced by the learned counsel for the respondent. Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroads into this field of administrative law. *Rama Chandran* is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunals may be reviewed on the grounds of "illegality", "irrationality" and possibly "proportionality" which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.

[16] The *Rama Chandran* decision has been regarded or interpreted as giving the reviewing court a license to review without restrain decisions for substance even when the said

decision is based on finding of facts. However, post *Rama Chandran* cases have applied some brakes to the courts' liberal approach in *Rama Chandran*. The Federal Court in the case of *Kumpulan Perangsang Selangor Bhd v. Zaid Mohd Noh* [1997] 2 CLJ 11 after affirming the *Rama Chandran* decision held that there may be cases in which for reason of public policy, national interest, public safety or national security the principle in *Rama Chandran* may be wholly inappropriate.

[17] The Federal Court, in *Petroliam National Bhd v. Nik Ramli Nik Hassan* [2003] 4 CLJ 625, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the *Rama Chandran* approach. Further, it was held that a reviewing judge ought not to disturb findings of the Industrial Court unless they were grounded on illegality or plain irrationality, even where the reviewing judge might not have come to the same conclusion.

[18] The Court of Appeal has in a number of cases held that where finding of facts by the Industrial Court are based on the credibility of witnesses, those findings should not be reviewed (see *William Jacks & Co (M) Sdn Bhd v. S Balasingam* [1997] 3 CLJ 235, *National Union of Plantation Workers v. Kumpulan Jerai Sdn Bhd (Rengam)* [2000] 1 CLJ 681, *Quah Swee Khoon v. Sime Darby Bhd* [2001] 1 CLJ 9, *Colgate Palmolive (M) Sdn Bhd v. Yap Kok Foong & Another Appeal* [2001] 3 CLJ 9. However, there are exceptions to this restrictive principle where:

(a) reliance upon an erroneous factual conclusion may itself offend against the principle of legality and rationality, or

(b) there is no evidence to support the conclusion reached.

(See *Swedish Motor Assemblies Sdn Bhd v. Hj Md Ison Baba* [1998] 3 CLJ 288).

[19] It is clear from the above authorities that the scope and ambit of *Rama Chandran* had been clearly explained and clarified. Decided cases cited above have also clearly established that where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court had

been arrived at by taking into consideration irrelevant matters, and had failed to consider relevant matters into consideration, such findings are always amendable to judicial review.

[20] That was what had exactly happened in this case. The Industrial Court whilst recognising that there was no positive proof of victimisation nevertheless went on to conclude that there was victimisation. The learned chairman of the Industrial Court held:

> The manner in which the charges have been framed against the Claimant gives the impression that the Claimant has been victimised. This Court of course cannot uphold a plea of victimisation in the absence of positive proof but as a Court of social justice it is bound to give due consideration to the possibility of victimisation and should any doubt arise it should give the benefit of the doubt to the employee after taking into consideration of the whole of evidence and the particular circumstances surrounding the case.

[21] The High Court as well as the Court of Appeal found that there was no evidence to support the issue of victimisation. Justice Low Hop Bing, JCA held that the 'Industrial Court had gone on a frolic of its own' in finding that the appellant had been victimised. He further held that it was manifestly wrong for the Industrial Court to proceed to embark on 'the possibility of victimisation' when it should have been concerned with probabilities ie, on the balance of probabilities. We agree with Justice Low Hop Bing JCA. Clearly the Industrial Court has committed jurisdictional errors when finding the possibility of victimisation in the absence of positive proof and misdirecting on the standard of proof by reference to possibility instead of a balance of probabilities.

[22] Basically, this is a case of an employee (the applicant) who refused to follow instructions. She refused to wear a white collared shirt and bow-tie. She wilfully and without lawful excuse habitually reported late to work in spite of numerous warnings issued to her. She failed to submit medical certificate of the medical practitioner promptly as was requested of her on the occasion she took medical leave. She also failed to inform her immediate superior whenever she have taken medical leave so as to enable her immediate superior to make alternative arrangements

for the smooth operation of the respondent's business. In short she was a recalcitrant employee.

[23] All the above are the relevant matters which the Industrial Court had failed to take into consideration. Instead, it took into consideration other irrelevant matters. A clear example was when it took into account the fact that the respondent's action in not taking action against another employee for a similar misconduct amounted to a display of double standard. With utmost respect, such conclusion is a clear error. As rightly pointed out by the learned High Court judge that such consideration was irrelevant as it was not for the appellant to question why the respondent as the employer should take disciplinary action against her and not another.

[24] Another error on the part of the Industrial Court was when it concluded that the respondent had condoned the appellant's conduct in relation to her coming to work late. Clearly the Industrial Court has misapplied the doctrine of condonation. The doctrine of condonation would only come into play if the respondent had been fully aware of the applicant's late coming and nonetheless elected to do nothing about it. However, the respondent had adduced evidence that the appellant had been warned about such conduct previously.

[25] In light of the multiple errors on the part of the Industrial Court, the High Court judge was correct in quashing the decision of the Industrial Court. For the same reason, the Court of Appeal did not exceed its role when it upheld the decision of the High Court in the review of the High Court's exercise of its supervisory jurisdiction.

Question 2

Whether the Court of Appeal was correct in law in holding that the Industrial Court as a specialized domain of the industrial jurisprudence is subject to a mere stringent test in relation to its pleadings and procedure than the Civil Courts in the face of section 30(5) of the Industrial Relation Act 1967.

[26] Learned counsel for the appellant submitted that on the face of s. 30(5) of the Industrial Relations Act 1967 (the Act) the practice and procedure governing the Industrial Court rules relating to procedure should be less stringent than that applicable

in the civil courts. Section 30(5) reads as follows:

> The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Thus, it was submitted that even though victimisation was not pleaded this should not be invoked to defeat the claim made by the appellant. It was further submitted that the Industrial Court must be allowed to conduct its proceedings with the necessary flexibility to arrive at a decision, so long as it has given special regard to the substantial merits of the case and decides according to equity and good conscience.

[27] Learned counsel for the respondent responded by stating that s. 30(5) of the Act could not be used to override or circumvent the basic rules of pleading. He submitted that the Industrial Court must confine itself to the four corners of the pleadings place before it. The Federal Court case in *Rama Chandran* was cited in support.

[28] There is no doubt that the underlying objectives and purposes of the Act is to ensure social justice to both employers and employees and to advance the progress of industry by bringing harmony and cordial relationship between the parties and to eradicate unfair labour practices, to protect workmen against victimisation by employers and to ensure termination of industrial disputes in a peaceful manner (see *Tanjung Jara Beach Hotel Sdn Bhd v. National Union of Hotel & Bar Restaurant Workers Peninsular Malaysia* [2004] 4 CLJ 657). However, as rightly pointed out by learned counsel for the respondent s. 30(5) of the Act cannot be used to override or circumvent the basic rules of pleading. The Industrial Court, like the civil courts must confine itself to the four corners of the pleading. This had been held to be so by this court in *Rama Chandran* which are as follows:

> It is trite law that a party is bound by its pleadings. The Industrial Court must scrutinise the pleadings and identify the issues, take evidence, hear the parties' arguments and finally pronounce its judgment having strict regards to the issues.

[29] There is no reason to depart from the above view. Pleadings in the Industrial Court are as important as in the civil courts. The

A appellant must plead its case and the Industrial Court must decide on the appellant's pleaded case. This is important in order to prevent element of surprise and provide room for the other party to adduce evidence once the fact or an issue is pleaded. Thus, the Industrial Court's duty, to act according to equity, good
B conscience and substantial merits of the case without regard to technicalities and legal form under s. 30(5), does not give the Industrial Court the right to ignore the Industrial Court Rules 1967 made under the principle Act. Rule 9 provides as follows:

C Statement of Case

(1) Upon a case being brought before the Court, the Registrar shall immediately serve notice in Form H on one or other of the parties as the President shall direct to submit to the Court a Statement of Case.

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[30] Rule 9(3) specifically prescribes the contents of a statement of case. It reads:

(3) Such Statement of Case shall be confined to the issues which are included in the Case referred to the Court by the
E Minister or in the matter required to be determined by the Court under the provisions of the Act and shall contain:

(a) a statement of all relevant facts and arguments;

(b) particulars of decisions prayed for;

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(c) an endorsement of the name of the first party and of the first party and of his address for service; and

(d) as appendix or attachment, a bundle of all relevant documents relating to the case.

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[31] The Court of Appeal has reproduced the applicant's statement of case in full in its judgment and found that the issue of victimisation was never pleaded. From the statement of case reproduced there is no doubt that the issue of victimisation was
H never pleaded. It was not a ground advanced by the appellant. As such the Industrial Court cannot act on a ground which was not advanced in a pleaded case. Section 30(5) of the Act cannot rescue the appellant's case.

I **Conclusion**

[32] At the end of it, we would answer the questions posed to us as follows:

(i) The answer to the first question is that where the facts do not support the conclusion arrived by the Industrial Court, or where the findings of the Industrial Court had been arrived at by taking into consideration irrelevant matters, and had failed to consider relevant matters into consideration, such findings are always amendable to judicial review.

(ii) As to the second question, our answer is that pleadings in the Industrial Court are as important as in the civil courts. Section 30(5) of the Act could not be used to override or circumvent the basic rules of pleading.

[33] The appeal is accordingly dismissed with costs.